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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

FEB - 3 2010

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

DOCKETED BY

nr

IN THE MATTER OF THE APPLICATION OF
MERCURY VOICE & DATA COMPANY FOR
APPROVAL OF A CERTIFICATE OF
CONVENIENCE AND NECESSITY TO PROVIDE
RESOLD LOCAL EXCHANGE, RESOLD LONG
DISTANCE, FACILITIES-BASED LOCAL
EXCHANGE, AND FACILITIES-BASED LONG
DISTANCE TELECOMMUNICATIONS
SERVICES.

DOCKET NO. T-20613A-08-0420

DECISION NO. 71480

OPINION AND ORDER

DATE OF HEARING:

September 30, 2009

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Sarah N. Harpring

APPEARANCES:

Mr. Joseph N. Roth, OSBORN MALEDON, PA, on
behalf of Mercury Voice & Data Company; and

Mr. Wesley Van Cleve, Staff Attorney, Legal Division,
on behalf of the Utilities Division of the Arizona
Corporation Commission.

BY THE COMMISSION:

This case involves an application by Mercury Voice & Data Company ("Mercury") for a Certificate of Convenience and Necessity ("CC&N") to provide competitive resold and facilities-based local exchange and competitive resold and facilities-based long distance telecommunications services in a service area including the entire State of Arizona.

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. On August 8, 2008, Mercury filed with the Arizona Corporation Commission

1 (“Commission”) an application for a CC&N authorizing Mercury to provide resold and facilities-
2 based local exchange and resold and facilities-based long distance telecommunications services in a
3 service area including the entire State of Arizona. Mercury requested to have its services classified as
4 competitive.

5 2. Between September 19, 2008, and March 13, 2009, the Commission’s Utilities
6 Division Staff (“Staff”) issued three data requests, and Mercury provided three sets of data
7 responses.¹

8 3. On June 29, 2009, Staff issued a Staff Report in this matter, recommending approval
9 of the application.

10 4. On July 20, 2009, a Procedural Order was issued scheduling a hearing in this matter
11 for September 30, 2009, and establishing other procedural requirements and deadlines.

12 5. On August 14, 2009, Mercury filed an affidavit of publication showing that notice of
13 the application and hearing had been published in *The Arizona Republic* on August 10, 2009.²

14 6. On September 30, 2009, a full evidentiary hearing in this matter was held before a
15 duly authorized Administrative Law Judge of the Commission at the Commission’s offices in
16 Phoenix, Arizona. Mercury and Staff appeared through counsel and provided evidence in the form of
17 testimony and exhibits. Mercury provided the testimony of Shari Chesser, Director of Telephony and
18 Business Services for Mercury, and Bill Severn, Chief Operating Officer for NPG Cable. Staff
19 provided the testimony of Candrea Allen, Public Utility Analyst for Staff. No public comment was
20 received.

21 **Fitness and Properness to Obtain a CC&N**

22 7. Mercury is a Missouri S corporation formed on April 28, 2006, and in operation since
23 January 22, 2008. Mercury was authorized to transact business in the State of Arizona on August 4,
24 2006, and is in good standing with the Commission’s Corporations Division.

25 8. Mercury is a wholly owned subsidiary of NPG Cable, which is a wholly owned
26 subsidiary of News-Press & Gazette Company (“NPG”). (Tr. at 20-21.)

27 ¹ Staff’s data requests were not docketed, and only Mercury’s second set of responses was docketed. However, all
28 three of Mercury’s data responses were entered into evidence as exhibits.

² Official notice is taken of this filing, as it was not entered into evidence as an exhibit.

1 9. Mercury provides telecommunications services in Missouri similar to the services for
2 which it is requesting CC&N authorization in Arizona. Mercury has been providing voice services in
3 Missouri since 2007 and holds a CC&N there. (Tr. at 11, 13.)

4 10. Mercury stated in its application that neither it nor any of its officers, directors,
5 partners, or managers has been or is currently involved in any formal or informal complaint
6 proceeding before a state or federal regulatory commission, administrative agency, or law
7 enforcement agency.

8 11. Mercury stated in its application that neither it nor any of its officers, directors,
9 partners, or managers has been or is currently involved in any civil or criminal investigation; has had
10 judgment entered in any civil matter; has had judgment levied by an administrative or regulatory
11 agency; or has been convicted of any criminal acts within the last 10 years.

12 12. Ms. Chesser testified that there have been no changes in Mercury's key personnel
13 since its application was filed. (Tr. at 22-23.)

14 13. According to Staff, the Missouri Public Service Commission indicated that no formal
15 or informal complaints have been filed against Mercury in Missouri, and Staff's search of the Federal
16 Communications Commission's website revealed that no complaints have been filed against
17 Mercury. (Ex. S-1.) Ms. Chesser also testified that no complaints have been filed against Mercury in
18 Missouri. (Tr. at 22.) Staff's Consumer Services Section reports that there have been no complaints,
19 inquiries, or opinions filed regarding Mercury in Arizona. (Ex. S-1.)

20 14. Ms. Allen testified that Mercury is a fit and proper entity to receive a CC&N to
21 provide the services for which it has requested CC&N authority. (Tr. at 35.)

22 **Technical Capabilities**

23 15. Mercury currently operates in Arizona as a voice over internet protocol ("VOIP")
24 provider. (Tr. at 13.) Mercury provides VOIP service in conjunction with Level 3, which is the
25 back-office service switch provider. (Tr. at 16.) Mercury is the last-mile facilities provider for the
26 VOIP services. (*Id.*) Mercury does not currently provide local service. (Ex. A-2.)

27 16. NPG Cable has been providing voice services since 2005 and currently provides voice,
28 video, and data services in Missouri, California, and Arizona. (Tr. at 11.) In Arizona, NPG Cable

1 currently serves Flagstaff, Sedona, Payson, Lake Havasu City, Parker, Bullhead, and Kingman. (*Id.*)
 2 Like Mercury, NPG Cable serves as the last-mile facilities provider for VOIP services, provided in
 3 conjunction with Level 3. (Tr. at 16.)

4 17. Ms. Chesser testified that a CC&N is not required to provide VOIP services because
 5 Level 3 is actually the carrier of record, and Level 3 has a CC&N to provide telecommunications
 6 services in Arizona.³ (Tr. at 22.) It is actually Mercury and NPG Cable that interface with the
 7 customer and perform customer billing, however. (*Id.*) Ms. Allen testified to Staff's opinion that the
 8 VOIP services currently being provided by Mercury do not require a CC&N, as the Commission has
 9 not made a ruling on the regulation of VOIP. (Tr. at 35.)

10 18. Ms. Chesser testified that Mercury currently provides service in Arizona with Level 3⁴
 11 and would be able to provide service on its own once it is able to enter into interconnection
 12 agreements ("ICAs") with incumbent local exchange carriers ("ILECs"). (Tr. at 12.) Mercury
 13 initially intends to enter into an ICA with Frontier and has already been in discussions with Frontier
 14 to that end. (Tr. at 12, 22.) Mercury also intends to enter into ICAs with Qwest and Verizon. (Tr. at
 15 22.) Ms. Chesser testified that Mercury has already received requests for service from approximately
 16 30 potential business customers in Arizona. (Tr. at 12-13, 23.)

17 19. Mercury intends to market only business services, no residential services, (Tr. at 21),
 18 and intends to provide both local intraLATA and interLATA services in Arizona, (Tr. at 13).
 19 Mercury asserts that it does not need to construct any additional infrastructure in Arizona to provide
 20 such services. (Tr. at 13.) Mercury intends to provide facilities-based services in Arizona, (Tr. at
 21 20), but does not intend to own any infrastructure in Arizona, instead leasing infrastructure owned by
 22 NPG Cable, (Tr. at 26; Ex. A-1).⁵

23 20. Mercury currently has two employees in Arizona. (Tr. at 13.) NPG Cable, the entity
 24 that supports Mercury, currently has 205 employees in Arizona. (*Id.*) Mercury anticipates adding
 25

26 ³ We take official notice that Level 3 Communications, LLC, was granted a CC&N to provide resold and facilities-
 27 based local exchange, toll, and access telecommunications services throughout Arizona in Decision No. 61737 (June 4,
 1999).

28 ⁴ Mercury seeks the CC&N so that it can provide services itself, without such a partner. (Tr. at 27-28.)

⁵ Mr. Severn testified that Mercury does not consider this to be resold service, although the lines will be owned by
 NPG Cable rather than by Mercury. (Tr. at 27.)

employees based on the revenues to be generated in Arizona should it receive a CC&N. (Tr. at 14.)

21. Mercury has three Directors, who also serve as Officers. (Ex. A-1.) Mr. Severn also serves as an Officer. (*Id.*) Mr. Severn has more than 19 years of experience in the telecommunications industry, including a number of years as the General Manager and then the Chief Operating Officer of NPG Cable. (*Id.*) Ms. Chesser has more than 13 years of experience in telecommunications operations, process, and product and project management, including several years with NPG Cable. (*Id.*) The four remaining key personnel identified by Mercury have more than 100 years of combined experience in the telecommunications industry. (*Id.*)

22. Staff believes that Mercury possesses the technical capabilities to provide the services it is requesting the authority to provide.

Financial Resources

23. Mercury intends to rely on the financial resources of NPG in initiating service, in initially providing voice and data services in Arizona, and in procuring any necessary systems or facilities. (Ex. A-1.) But Mercury believes that it will generate enough revenue through its subscribers to provide adequate financing to support its operations on an ongoing basis. (*Id.*)

24. Mercury estimates that it will generate approximately \$900,000 in revenue from telecommunications services provided to Arizona customers during its first 12 months of operations and that its operating expenses during the same time period will be approximately \$750,000. (Ex. A-1.)

25. Mercury provided Staff audited 2008 financial statements for NPG showing total assets of \$219,121,638; total equity of \$85,206,827; and net income of \$1,420,463.⁶ (Ex. S-1.)

26. Ms. Allen testified that, based on the financial information provided by Mercury, Mercury has the financial capability to provide the services for which it has requested CC&N authority. (Tr. at 34.)

Competitive Services/Proposed Rates

27. Mercury has requested that the services to be provided under its CC&N be classified

⁶ Mercury requested that the consolidated financial statements of NPG and its subsidiaries be kept confidential except for the net assets, equity, and net income figures required for the Staff Report. (Ex. A-2.)

1 as competitive. (Ex. A-1.)

2 28. Staff confirms that Mercury would be providing local exchange service in areas in
3 which an ILEC and competitive local exchange carriers ("CLECs") are already providing services; in
4 which ILECS have the ability to offer the same services that Mercury intends to offer; in which many
5 CLECs and local exchange resellers also offer services substantially similar to those Mercury intends
6 to offer; in which new entrants must depend upon ILECs for interconnection, to terminate traffic to
7 customers, and to provide essential local exchange service elements until the new entrant's own
8 network is built; and in which ILECs have existing relationships with their customers and a virtual
9 monopoly in the local exchange market. (Ex. S-1.) Likewise, Staff stated that numerous providers
10 have been authorized to provide both facilities-based and resold interexchange services; that various
11 ILECs provide intraLATA interexchange service; that the large facilities-based interexchange carriers
12 hold a majority of the interLATA interexchange market; and that the ILECs provide a large portion
13 of the intraLATA interexchange market. (*Id.*) Staff stated that Mercury will need to compete with
14 the existing providers in order to obtain subscribers to its services and that Mercury is not expected to
15 be able to exert market power. (*Id.*) Staff further stated that this competitive process should result in
16 rates that are just and reasonable. (*Id.*)

17 29. Mercury projects that its Arizona jurisdictional assets used to provide
18 telecommunications services to Arizona customers at the end of its first 12 months of operations will
19 have a net book value of \$0. (Ex. A-1.) Staff determined that Mercury's fair value rate base
20 ("FVRB") at the end of its first 12 months of operations will be equal to its projected net book value
21 of \$0 and thus is too small to be useful in a fair value analysis. (Ex. S-1.) While Staff considered
22 Mercury's FVRB information, Staff determined that it should not be given substantial weight in the
23 analysis of Mercury's rates. (*Id.*)

24 30. Staff reviewed the rates in Mercury's proposed tariffs and determined that they are
25 comparable to the rates charged by CLECs, ILECs, and major long distance carriers operating in the
26 State of Arizona. (Ex. S-1.) Ms. Allen testified that the tariffs only show the actual rates Mercury
27 intends to charge, which means that those rates are also the maximum rates that may be charged. (Tr.
28 at 33.)

1 **Performance Bond/Irrevocable Sight Draft Letter of Credit**

2 31. Mercury's proposed local exchange tariff allows Mercury to collect a deposit from any
3 customer whose financial responsibility is not established to Mercury's satisfaction and to require a
4 customer to provide an advance payment before services and facilities are furnished. (Ex. A-1 at Att.
5 B, ACC Tariff No. 2, §§ 2.5.6 and 2.5.7.) Mercury's proposed long distance tariff does not allow
6 Mercury to collect deposits or advance payments. (Ex. A-1 at Att. B, ACC Tariff No. 3, §§ 2.5.3 and
7 2.5.4.)

8 32. Staff stated that the Commission's current performance bond/irrevocable sight draft
9 letter of credit ("ISDLOC") requirements are \$10,000 for resold long distance, if the provider collects
10 advances, deposits, or prepayments from its long distance customers; \$25,000 for resold local
11 exchange; \$100,000 for facilities-based long distance; and \$100,000 for facilities-based local
12 exchange. (Ex. S-1.) Staff stated that the amount of the recommended performance bond/ISDLOC
13 for a provider seeking to provide multiple services is an aggregate of the amount normally imposed
14 for each type of service. (*Id.*) Thus, in this case, Staff recommends that Mercury be required to
15 obtain a performance bond/ISDLOC in the amount of \$225,000. (*Id.*)

16 33. Ms. Chesser testified that Mercury is concerned about the Staff recommendation for
17 Mercury to procure a \$225,000 performance bond or ISDLOC because Mercury does not currently
18 require or collect any deposits on voice services, does not intend to collect customer deposits in
19 Arizona, and believes that the performance bond/ISDLOC is an excessive financial burden. (Tr. at 9-
20 10, 14, 24-25.) Ms. Chesser testified that the concern arose after Mercury looked into the cost of
21 carrying a letter of credit because the costs of carrying bonds/ISDLOCs have increased and would
22 equate to "quite a bit" of the revenue that Mercury would receive in Arizona. (Tr. at 9-10.) Ms.
23 Chesser testified that a \$225,000 bond would cost \$4,500 per month, although she was unable to
24 specify whether more than one financial institution had been contacted to obtain the price quote. (Tr.
25 at 20.)

26 34. Mercury suggests that rather than being required to obtain a \$225,000 performance
27 bond/ISDLOC as recommended by Staff, Mercury be required to obtain and file a bond/ISDLOC if
28 Mercury desires to change its policy and to collect deposits, advances, or prepayments for any

1 telephone service, with the filing of the bond/ISDLOC required to be made 30 days in advance of
2 Mercury's requesting any deposit, advance, or prepayment. (*See* Tr. at 10.)

3 35. Ms. Chesser was unable to explain why Mercury's proposed tariff includes a provision
4 for collection of customer deposits, as she said that Mercury has never collected deposits for either
5 local or long-distance voice service. (Tr. at 14-15.) Mr. Chesser confirmed, however, that the
6 proposed tariff filed with Mercury's application allows for both deposits and advance payments to be
7 charged.⁷ (Tr. at 18.) Mercury is willing to obtain and maintain a bond/ISDLOC if it is collecting
8 deposits or advance payments, but otherwise objects to a bond/ISDLOC requirement, although it is
9 willing and financially able to comply with it. (Tr. at 19-20, 24-25.)

10 36. Ms. Allen testified that the purpose of a performance bond/ISDLOC is to protect and
11 secure customer deposits and to protect customers in the event that a provider goes out of business.
12 (Tr. at 30-31.) Ms. Allen testified that Staff's standard recommendation is for a performance
13 bond/ISDLOC in the amount of \$225,000 to be procured by a provider planning to provide resold
14 local exchange, facilities-based local exchange, and facilities-based long distance services regardless
15 of whether the provider intends to collect deposits or advance payments. (Tr. at 31-32.) Staff
16 recommends a bond/ISDLOC of \$100,000 for each type of facilities-based service and a
17 bond/ISDLOC of \$25,000 for resold local exchange, for a combined total of \$225,000. (Tr. at 32.)
18 Ms. Allen also testified that Staff recommends for the bond/ISDLOC to be increased based on
19 Mercury's accumulating a certain level of deposits and advance payments. (Tr. at 32-33.)

20 **Regulatory Requirements**

21 37. A.A.C. R14-2-1308(A) requires a local exchange carrier to make local number
22 portability available to facilitate the ability of a customer to switch between authorized local carriers
23 within a given wire center without changing the customer's telephone number and without
24 impairment of quality, functionality, reliability, or convenience of use.

25 38. A.A.C. R14-2-1204(A) requires all telecommunications service providers that
26 interconnect to the public switched network to provide funding for the Arizona Universal Service

27
28 ⁷ Mercury's responses to Staff's second set of data requests also states that Mercury intends to collect advances and/or
deposits for local exchange service, but not for long distance service. (Ex. A-3.)

1 Fund ("AUSF"). A.A.C. R14-2-1204(B)(3)(a) requires new telecommunications service providers
2 that begin providing basic local exchange service after April 26, 1996, to pay AUSF charges as
3 provided under A.A.C. R14-2-1204(B)(1) and those that begin providing toll service after April 26,
4 1996, to pay AUSF charges as provided under A.A.C. R14-2-1204(B)(2). A.A.C. R14-2-
5 1204(B)(3)(b) requires all other telecommunications service providers that interconnect to the public
6 switched network and begin providing telecommunications service after April 26, 1996, to make
7 written elections as to how they will be categorized for purposes of AUSF assessments.

8 39. Commission rules require Mercury to file a tariff for each competitive service that
9 states the maximum rate as well as the effective (actual) price that will be charged for the service.
10 Under A.A.C. R14-2-1109(A), the minimum rate for a service must not be lower than the total
11 service long-run incremental cost of providing the service. Any change to Mercury's effective price
12 for a service must comply with A.A.C. R14-2-1109, and any change to the maximum rate for a
13 service in Mercury's tariff must comply with A.A.C. R14-2-1110.

14 40. A.A.C. R14-2-1201(6)(d) requires that basic local exchange telephone service include
15 access to emergency services, including but not limited to emergency 911. In its application,
16 Mercury certified that, in accordance with A.A.C. R14-2-1201(6)(d) and 47 C.F.R. §§ 64.3001 and
17 64.3002,⁸ it will provide all customers with 911 and E911 services, where available, or will
18 coordinate with ILECs and emergency service providers to provide 911 and E911 services. (Ex. A-
19 1.)

20 41. A.A.C. R14-2-1901 et seq. establish requirements to protect Arizona consumers from
21 unauthorized carrier changes ("slamming") and apply to each public service corporation providing
22 telecommunications services within the State of Arizona and over which the Commission has
23 jurisdiction.

24 42. A.A.C. R14-2-2001 et seq. establish requirements to protect Arizona consumers from
25 unauthorized carrier charges ("cramming") and apply to each public service corporation providing
26 telecommunications services within the State of Arizona and over which the Commission has

27 ⁸ 47 C.F.R. § 64.3001 requires all telecommunications carriers to transmit all 911 calls to a public safety answering
28 point ("PSAP"), to a designated statewide default answering point, or to an appropriate local emergency authority as set
forth in 47 C.F.R. § 64.3002.

1 jurisdiction.

2 43. A.A.C. R14-2-1107 requires a competitive telecommunications service provider to file
3 an application for authorization with the Commission before it discontinues service; the rule also
4 establishes customer notice requirements and other requirements related to discontinuance of service.

5 **Staff's Recommendations**

6 44. Ms. Allen testified that, in Staff's opinion, it is in the public interest to grant
7 Mercury's application for a CC&N. (Tr. at 30.)

8 45. Staff recommends approval of Mercury's application to provide resold and facilities-
9 based local exchange and resold and facilities-based long distance telecommunications services in
10 Arizona and further recommends:

- 11 a. That Mercury be ordered to comply with all Commission rules, orders, and
12 other requirements relevant to the provision of intrastate telecommunications
13 services;
- 14 b. That Mercury be ordered to abide by the quality of service standards that were
15 approved for Qwest (formerly known as U.S. West) in Docket No. 01051B-93-
16 0183 (Decision No. 59421), without application of the penalties therein;
- 17 c. That Mercury be prohibited from barring access to alternative local exchange
18 service providers who wish to serve areas where Mercury is the only provider
19 of local exchange service facilities;
- 20 d. That Mercury be required to notify the Commission immediately upon changes
21 to Mercury's name, address, or telephone number;
- 22 e. That Mercury be ordered to cooperate with Commission investigations,
23 including but not limited to those regarding customer complaints;
- 24 f. That Mercury be ordered to offer Caller ID with the capability to toggle
25 between blocking and unblocking the transmission of the telephone number at
26 no charge;
- 27 g. That Mercury be ordered to offer Last Call Return service that will not return
28 calls to telephone numbers that have the privacy indicator activated;

- h. That the Commission authorize Mercury to discount its rates and service charges to the marginal cost of providing the services;
- i. That Mercury's proposed services be classified as competitive; and
- j. That if, in the future, Mercury wants to collect advances and/or deposits from its interexchange customers, Mercury be required to file an application with the Commission for Commission approval, which application shall reference this Decision and shall explain Mercury's plans for increasing its performance bond/ISDLOC.

46. Staff further recommends that Mercury be ordered to comply with the following by the time provided, with no extension of time permitted, and that its CC&N be rendered null and void, after due process, if it fails to do so:

- a. Mercury shall, within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first, docket conforming tariffs for each service within its CC&N, which tariffs shall coincide with the application and state that Mercury does not collect deposits from its interexchange customers;
- b. Mercury shall procure a performance bond or ISDLOC in the amount of \$225,000, which minimum amount shall be increased, in increments of \$112,500, when the total amount of the advances and/or deposits collected from Mercury's customers is within \$22,500 of the bond amount or ISDLOC amount;
- c. Mercury shall file the original performance bond or ISDLOC with the Commission's Business Office and copies of the performance bond/ISDLOC with Docket Control, as a compliance item in this docket, within 30 days of the effective date of a Decision in this matter; and
- d. Mercury shall maintain the original performance bond/ISDLOC in effect until further Order of the Commission.

47. Mercury is willing to comply with all of Staff's recommendations made in the Staff

1 Report, although it would prefer not to be required to obtain a performance bond or ISDLOC until it
2 actually collects advance payments or deposits. (Tr. at 10-11, 16, 24-25.)

3 48. Staff recommends that the Commission draw on the performance bond/ISDLOC on
4 behalf of, and for the sole benefit of, Mercury's customers if the Commission finds, in its discretion,
5 that Mercury is in default of its obligations arising from its CC&N and that the Commission use the
6 performance bond/ISDLOC funds, as appropriate, to protect Mercury's customers and the public
7 interest and take any and all actions the Commission deems necessary, in its discretion, including but
8 not limited to returning prepayments or deposits collected from Mercury's customers.

9 49. As Staff explained, a performance bond/ISDLOC is typically required for resold and
10 facilities-based local exchange providers and facilities-based long distance providers regardless of
11 whether those providers collect deposits, advances, or prepayments from their customers. This
12 requirement is designed, at least in part, to ensure that customers are not left with no service and no
13 means of being made whole in the event that additional funds must be expended to obtain
14 replacement service. Although we understand Mercury's concern about the expense of obtaining a
15 performance bond/ISDLOC in the amount of \$225,000, we believe that such a bond/ISDLOC is
16 necessary to protect Mercury's potential customers from future loss of service. In addition, we note
17 that Mercury's position on advance payments and deposits for local exchange customers is
18 inconsistent and that the possibility for advance payments and/or deposits to be collected from
19 Mercury's future local exchange customers makes it even more appropriate to require a performance
20 bond/ISDLOC at this time, to further protect those local exchange customers from the loss of any
21 advance payments and/or deposits held by Mercury should Mercury go out of business or otherwise
22 be unable to provide service in the future.

23 50. Staff has recommended that Mercury be prohibited from obtaining an extension of
24 time to comply with the conditions in Findings of Fact No. 46. We do not believe that such a
25 prohibition is necessary in this case, as Mercury does not have a history of failing to comply with
26 deadlines and requesting numerous extensions of time. Rather, we believe that it is appropriate to
27 modify the deadline for obtaining and filing the required performance bond/ISDLOC to require that
28 the original performance bond/ISDLOC be filed with the Commission's Business Office and copies

1 filed with Docket Control, as a compliance item in this docket, within 90 days after the effective date
2 of this Decision or at least 10 days before Mercury's first customer under its CC&N is served,
3 whichever comes first, and to require Mercury to file, as a compliance item in this docket, notice of
4 when its first customer is served. This is consistent with our recent Decision in Docket No. T-
5 20618A-08-0469, regarding iBasis Retail, Inc., and should be a more practical means of achieving
6 compliance without the need for deadline extensions. We are not making any change to the deadline
7 for Mercury to file its conforming tariffs.

8 51. Staff's recommendations in Findings of Fact Nos. 45 and 46, as modified in Findings
9 of Fact No. 50, are reasonable and should be adopted.

10 CONCLUSIONS OF LAW

11 1. Upon receiving a CC&N, Mercury will be a public service corporation within the
12 meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

13 2. The Commission has jurisdiction over Mercury and the subject matter of the
14 application.

15 3. Notice of Mercury's application was given in accordance with the law.

16 4. A.R.S. § 40-282 allows a telecommunications company to file an application for a
17 CC&N to provide competitive telecommunications services.

18 5. Pursuant to Article XV of the Arizona Constitution and the Arizona Revised Statutes,
19 it is in the public interest for Mercury to provide the telecommunications services for which it has
20 requested authorization in its application.

21 6. Mercury is a fit and proper entity and has the technical capabilities and financial
22 resources necessary to receive a CC&N to provide resold and facilities-based local exchange and
23 resold and facilities-based long distance telecommunications services.

24 7. The telecommunications services that Mercury desires to provide are competitive in
25 Arizona.

26 8. Pursuant to Article XV of the Arizona Constitution and 14 A.A.C. 2, Article 11, it is
27 just and reasonable and in the public interest for Mercury to establish rates and charges for
28 competitive services that are not less than Mercury's total service long-run incremental costs of

providing the competitive services approved herein.

9. Staff's recommendations set forth in Findings of Fact Nos. 45 and 46, as modified in Findings of Fact No. 50, are reasonable and should be adopted.

10. Mercury's FVRB is not useful in determining just and reasonable rates for the competitive services it proposes to provide to Arizona customers.

11. Mercury's rates, as they appear in its proposed tariffs, are just and reasonable and should be approved.

ORDER

IT IS THEREFORE ORDERED that the application of Mercury Voice & Data Company for a Certificate of Convenience and Necessity to provide resold and facilities-based local exchange and resold and facilities-based long distance telecommunications services in Arizona is hereby granted, conditioned upon compliance with Staff's recommendations set forth in Findings of Fact Nos. 45 and 46, as modified in Findings of Fact No. 50.

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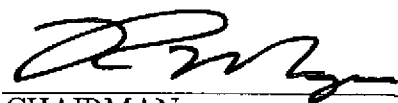
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IT IS FURTHER ORDERED that if Mercury Voice & Data Company fails to meet the conditions outlined in Findings of Fact No. 46 within the timeframes therein, as modified in Findings of Fact No. 50, the Certificate of Convenience and Necessity conditionally granted herein shall become null and void after due process.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.



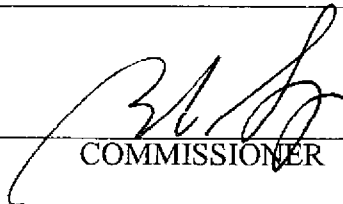
CHAIRMAN



COMMISSIONER



COMMISSIONER



COMMISSIONER



COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 3rd day of FEBRUARY, 2010.


ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

SNH:db

1 SERVICE LIST FOR:

MERCURY VOICE & DATA COMPANY

2 DOCKET NO.:

T-20613A-08-0420

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